Public Finance Bhd v Soo Hock Siong

HIGH COURT (IPOH) – CIVIL SUIT NO 24-159-87
ANUAR J
16 DECEMBER 1987

Banking – Loan secured by charge – Claim instituted to recover debt – Whether claim is a charge action or action in contract – Whether leave under O 83 r 4(1) of the Rules of the High Court 1980 is required before default judgment can be entered – Rules of the High Court 1980, O 83 r 4(1)

Civil Procedure – Default judgment – Setting aside – Loan secured by charge – Claim instituted to recover debt – Whether claim is a charge action or action in contract – Whether leave under O 83 r 4(1) of the Rules of the High Court 1980 is required before default judgment can be entered – Rules of the High Court 1980, O 83 r 4(1)

The plaintiff obtained a judgment in default against the defendant in respect of an outstanding loan granted by the plaintiff to the defendant. The loan was secured by a charge. The defendant filed the present application by way of summons-in-chambers to set aside the judgment. The defendant contended that the judgment entered is irregular in that no leave has been obtained under O 83 r 4(1) of the Rules of the High Court 1980.

Held, dismissing the application: The letter of offer in which the plaintiff agreed to grant the defendant a loan forms the basis of the contract between the plaintiff and the defendant. The plaintiff's action is therefore a simple claim to recover a debt. The claim is not a charge action and therefore O 83 r 4(1) of the Rules of the High Court 1980 does not apply.

Legislation referred to
Rules of the High Court 1980 O 83 r 4(1)

Yogamalar Cumarasamy (Miss) for the plaintiff.
Chan Kok Keong for the defendant.

Cur Adv Vult

Anuar J: This is an application by the defendant by way of summons-in-chambers to set aside a judgment in default dated 25 June 1987 entered against the defendant.

The main ground upon which this application is made is that the judgment entered is irregular in that no leave has been obtained under O 83 r 4(1) of the Rules of the High Court 1980.

The plaintiff's claim against the defendant is for a sum of $99,001.98 being the balance still outstanding in respect of a loan granted to the defendant by the plaintiff.

The plaintiff filed the suit on 2 March 1987 and the writ was served on the defendant on 19 March 1987. The defendant entered appearance on 2 April 1987. The defendant failed to file a defence. The plaintiff then obtained judgment in default of defence on 25 June 1987.

Under O 83 r 4(1) of the Rules of the High Court 1980, judgment in default of defence shall not be entered except with the leave of the court. This rule affects a charge action begun by writ.

The defendant claimed that the plaintiff had obtained the judgment without the leave of the court. However, the plaintiff contended that it is not a charge action and therefore no leave is required under O 83 r 4(1).

The issue therefore is whether the plaintiff's claim is a charge action or not. If it is a charge action, then O 83 r 4(1) of the Rules of the High Court 1980 would apply and leave must be obtained before judgment in default of defence could be entered.

It is not denied that the loan is secured by a charge. However, the plaintiff contended that the claim is not a charge action. It is an action in contract and one to recover a debt. It is therefore not bound by O 83 r 4(1) of the Rules of the High Court 1980.

The plaintiff relies on the letter of offer dated 10 May 1982 in which the plaintiff agreed to grant the defendant a loan of $70,000. This letter of offer forms the basis of the contract between the plaintiff and the defendant. The plaintiff's action is therefore a simple claim to recover a debt. With respect I agree with the plaintiff. In my judgment the claim is not a charge action. It is a claim based on contract and therefore O 83 r 4(1) of the Rules of the High Court does not apply.

For the reasons above, I would dismiss this application with costs.

Order accordingly.

Solicitors: *Toh Theam Hock & Co*; *Chan & Associates.*

Reported by *Ng Sheau Jiuan*

United Malayan Banking Corporation Bhd v Syarikat Perumahan Luas Sdn Bhd (No 2)

HIGH COURT (PENANG) – ORIGINATING SUMMONS NO 31-835-1986
EDGAR JOSEPH JR J
8 AUGUST 1988

Land Law – Foreclosure proceedings – Application to set aside order for sale – Express restriction in interest prohibiting charging without written sanction of the authority – Charge registered in breach of – Whether charge void – Whether application time-barred by three-month limit – Specific performance – Further consequential orders – National Land Code 1965, ss 340(2)(b), (2)(c) & 418 – Rules of the High Court 1980, O 31 r 2 – Contracts Act 1950, s 66

This is an application by the chargor to set aside an order for sale of certain land comprised in QT No HS(D) 19, Lot No 40(2), section 14, Bandar Georgetown, Penang, NED Penang ('the land') pursuant to the provisions of s 256 of the National Land Code ('the Code').